

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF
STATE OF WASHINGTON,
DEPARTMENT OF NATURAL
RESOURCES,

Appellant,

vs.

SOUTHWEST AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB No. 356

FINAL ORDER ON MOTION

THIS MATTER being an appeal from respondent's Order directing appellant to "cease and desist permitting and allowing to be ignited any open fire within the jurisdiction of" respondent, except for permits for those fires of the types provided in respondent's "open outdoor fire policy"; having come on regularly for hearing before the Pollution Control Hearings Board on the 29th day of August, 1973, at Lacey, Washington; and appellant Washington State Department of Natural Resources appearing through its attorney Theodore O. Torve and respondent

1 appearing through its attorney James Ladley; and Board Member Walt
2 Woodward being present at the hearing, and the Board having considered
3 the sworn testimony, exhibits, records and files herein and briefs of
4 counsel and having entered on the 4th day of December, 1973 its
5 proposed Order on Motion; and the Board having served said proposed
6 Order on Motion upon all parties herein by certified mail, return
7 receipt requested and twenty days having elapsed from said service; and

8 The Board having received exceptions to said proposed Order on
9 Motion from appellant and respondent and having considered and denied
10 same; and the Board being fully advised in the premises; now therefore,

11 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
12 Order on Motion, dated the 4th day of December, 1973, and incorporated
13 by this reference herein and attached hereto as Exhibit A, is adopted
14 and hereby entered as the Board's Final Order on Motion herein.

15 DONE at Lacey, Washington, this 3rd day of January, 1974.

16 POLLUTION CONTROL HEARINGS BOARD

17 Walt Woodward
18 WALT WOODWARD, Chairman

19 W. A. Gissberg
20 W. A. GISSBERG, Member

21 Mary Ellen McCaffree
22 MARY ELLEN McCAFFREE, Member

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An informal hearing was held on the above appeal in Lacey, Washington, on August 29, 1973, with Walt Woodward presiding.

Appellant appeared by and through its attorney, Theodore O. Torve; respondent appeared by and through its attorney, James Ladley.

The Board has considered the transcript of the hearing, the exhibits, and briefs of counsel.

Appellant (DNR), appeals from respondent's (SWAPCA) Order directing DNR to "cease and desist permitting and allowing to be ignited any open

EXHIBIT A

1 fire within the jurisdiction of" SWAPCA, except for permits for those
2 fires of the types provided in SWAPCA's "open outdoor fire policy."

3 DNR essentially contends that the Order is unlawful and that
4 SWAPCA has no authority nor jurisdiction by its regulations to control
5 DNR's regulation of burning permits for abating or prevention of
6 forest fire hazards, or instruction or silvicultural operations authorized
7 under RCW 70.94.660 and other statutes.

8 DNR orally moved the Board for its Order finding the SWAPCA Order
9 which is the subject of the appeal to be invalid as a matter of law.
10 SWAPCA likewise indicated at the hearing that the matter could be treated,
11 in affect, as a motion for judgment on the pleadings. NOW THEREFORE,

2 IT IS ORDERED that the SWAPCA Order which is the subject matter of
13 this appeal be and the same is vacated. RCW 76.04.150 makes it unlawful,
14 and punishable as a crime, for any person to burn any inflammable
15 material during the closed fire seasons without a written permit from DNR.
16 Such permits are obviously also within the concurrent jurisdiction of
17 SWAPCA. Appellant's Order, if followed, would prevent DNR from issuing
18 such permits and others which the statutes of the state require DNR to
19 issue. SWAPCA has no authority to and cannot repeal the clear directions
20 of state statutes.

21 IT IS FURTHER ORDERED that DNR and SWAPCA, through good faith
22 negotiations, compromise, and effort, enter into and establish a limited
23 burning program which will result in the adoption of a one-permit system
24 as provided by RCW 70.94.745 et. seq. We realize that this Board's
Order may be subject to the same criticism as the SWAPCA Order which
26 was the subject matter of the appeal. However, we are compelled to
27 ORDER ON MOTION

1 point out to both parties that the legislature has directed governmental
2 agencies to establish a one-permit limited burning program for the
3 people of this state. That cannot be achieved unless and until
4 governmental agencies cooperate in a spirit of good-will and compromise.
5 That attitude does not seem to be present between these parties.

6 DONE at Lacey, Washington, this 4th day of December, 1973.

7 POLLUTION CONTROL HEARINGS BOARD

8 Walt Woodward
9 WALT WOODWARD, Chairman

10 W. A. Gissberg
11 W. A. GISSBERG, Member
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13 Mary Ellen McCaffree
14 MARY ELLEN McCAFFREE, Member
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27 ORDER ON MOTION